Statement
of
The Honorable James E. Billie
Chairman
The Seminole Tribe of Florida

before the

Senate Committee on Indian Affairs

on the

Intergovernmental Gaming Agreement Act of 1999 (S. 985)

July 21, 1999

Statement
of
The Honorable James E. Billie
Chairman
The Seminole Tribe of Florida
before the
Senate Committee on Indian Affairs
on
The Intergovernmental Gaming Agreement Act of 1999 (S. 985)
July 21, 1999

Mr. Chairman, members of the Committee, my name is James E. Billie. I have served as Chairman of The Seminole Tribe of Florida for 20 years and recently was elected to a sixth four-year term. I appreciate the opportunity to be here today to talk about The Seminole Tribe of Florida's experience with the Indian Gaming Regulatory Act, and why the changes you propose in your bill, S. 958, are needed. I want to thank you for introducing this piece of legislation, and I urge the Committee -- and the Congress -- to move it through the legislative process as quickly as possible.

I am proud to say that I brought gaming to The Seminole Tribe of Florida in 1979 as a way to generate some income for our tribe. Back then, the Tribe was poor -- to put it mildly. Many of our tribal members lived in open chickees with no electricity or running water. Our tribal government offices were housed in a mobile home. Council chambers were small, cramped and unable to accommodate the broad participation of tribal members in council meetings. Our tribal lands were isolated and inappropriate for most kinds of economic development. And because our lands are held in trust by the federal government, we had no tax base by which to fund our government and provide for our people.

That all began to change in 1979 when we opened a small bingo hall on our Hollywood reservation. When the State of Florida threatened to close the bingo hall soon after it opened, we sued in federal court. Ultimately the federal courts upheld our right to operate bingo halls on our reservation without being subject to state regulations governing bingo operations elsewhere in the State.

The next 10 years brought dramatic change to our five reservations. For the first time in our history, we had the resources to improve the quality of life for our people. We used gaming income to build houses, to create infrastructure like roads, electric lines and water systems. When we opened a grade school on our Big Cypress reservation, our youngest children could walk to school. Before that, children as young as five were being bused 40 miles each way to the nearest public school. Things were definitely looking up for the Seminole Tribe of Florida.

The Promise of the Indian Gaming Regulatory Act

Then came the Indian Gaming Regulatory Act. As other tribes followed our lead and opened gaming facilities on their reservations, tribal governments all over the country were increasingly able to use their own revenues to provide for their people what the United States federal government had promised as part of its trust responsibility, but never delivered. But this new-found independence didn't sit well with some folks. State governments, in particular, wanted to regulate what tribes could and couldn't do in terms of gaming on their reservation lands.

In 1988, state governors were pushing to get Congress to give states authority over tribal gaming. IGRA, tribal leaders were told by our friends in Congress, would be a compromise we could live with. Our rights to conduct the kinds of games available to any person for any purpose in the state in which our reservations were located would not be compromised. The so-called "Cabazon standard" would continue to govern what kinds of games we could offer. In return, however, Congress said we would have to agree to negotiate a compact with our state outlining the terms under which we would operate class III, or casino-style, games that met the Cabazon public-policy test. States would have to negotiate and complete these compacts, Congress said. If they failed to do so, tribes could ask the federal courts to direct them to do so within 60 days. If there was no compact within 60 days, we would have the right to mediation and then a process that, if the State refused to sign a compact, would allow us to negotiate procedures for class III gaming directly with the Secretary of the Interior, without the State's participation. That was the promise made in IGRA.

Negotiations with the State of Florida

Mr. Chairman, members of the Committee, we did our part to comply with the new federal law. On January 29, 1991, we formally requested that the State of Florida enter into negotiations for a compact for class III gaming on tribal lands. Although the State met and corresponded with the Tribe concerning a compact, no satisfactory progress was made. Accordingly, on September 19, 1991, more than 180 days after the formal compact request, the Tribe filed suit in the United States District Court for the Southern District of Florida in accordance with the IGRA, alleging that the State had not negotiated in good faith.

On June 18, 1992, the District Court denied Florida's motion to dismiss on Eleventh Amendment grounds, concluding that Congress had the power under the Indian Commerce Clause to abrogate the State's Eleventh Amendment immunity, and had, in fact, abrogated such immunity in enacting the IGRA.

On January 18, 1994, the U.S. Court of Appeals for the Eleventh Circuit reversed the District Court's decision holding that Congress lacked the power to abrogate the State's Eleventh Amendment immunity under the Indian Commerce Clause. In Part V of its opinion, the court noted that, as a result of its holding on the Eleventh Amendment, the

Procedures for involving the Federal courts in the compact process "necessarily fail" unless the State consents to suit. It held, however, that all other provisions of the IGRA remain in effect because of IGRA's explicit severability clause, and went on to discuss the remedy "left for an Indian tribe faced with a state that not only will not negotiate in good faith, but also will not consent to suit." The court said "the answer, gleaned from the statute, is simple," and is found in Section 2710(d)(7)(B)(vii). The Tribe's recourse is to notify the Secretary of the Interior of the State's failure to negotiate a compact and assertion of Eleventh Amendment immunity, whereupon the Secretary "may prescribe regulations governing Class III gaming on the Tribe's land."

On February 4, 1994, Florida filed a petition with the Court of Appeals for rehearing, seeking withdrawal by the court of that part of its opinion directing the Secretary to issue procedures. That petition was denied on April 6, 1994. On April 15, 1994, viewing the matter as ripe for Secretarial action at that time, the Tribe submitted a detailed legal memorandum outlining the Secretary's duty to prescribe class III procedures for a tribe when a state, such as Florida, asserts its Eleventh Amendment immunity.

Over the course of the next few months, Administration officials were unable to advise the Tribe on when the Secretary would act on its request for Procedures. As a result, the Seminole Tribe had no option but to preserve its rights to challenge the Eleventh Circuit's decision by filing a petition for *certiorari* with the Supreme Court. The Supreme Court granted *certiorari* and, on March 27, 1996, affirmed the decision of the Court of Appeals that the State of Florida was immune from suit pursuant to the Eleventh Amendment. In its affirmance, the Supreme Court noted the Eleventh Circuit's severability analysis, but expressly declined to rule on that analysis, leaving it undisturbed.

On April 15, 1996, the Supreme Court denied the petitions for *certiorari* from the States of Alabama and Florida urging the Court to reject the Eleventh Circuit's severability analysis.

Following the Supreme Court decision, the Tribe renewed its efforts to obtain Secretarial Procedures. As the administrative process languished, the Tribe continued to seek a compact with the State of Florida. Negotiations were underway with former Governor Chiles until the end of his administration. The Tribe has sought to reopen negotiations with the newly elected Governor Bush, as well. And yet, more than eight years after requesting compact negotiations with the State of Florida, we have no class III gaming compact.

We are pleased that the Secretary of the Interior is moving forward in developing Secretarial procedures for class III gaming for The Seminole Tribe, pursuant to the directive of the Eleventh Circuit court. However, we realize that this process is unlikely to result in authority to conduct class III gaming on our reservation lands in the near future. As you know, the States of Florida and Alabama have filed suit in U.S. district court in Florida challenging the Secretary's authority to issue procedures. We expect this case to go all the way to the Supreme Court in a process that may take several years to

resolve. Meanwhile, in response to congressional concern that the Secretary may be exceeding his authority in issuing class III procedures, Secretary Babbitt has repeatedly stated in writing that the Department will refrain from allowing any procedures it may prescribe to be implemented until the Federal court has resolved the authority question.

Therefore, as a direct result of the State's assertion of Eleventh Amendment immunity, upheld by the Supreme Court in *Seminole Tribe*, the federal courts are precluded from providing the Seminole Tribe with the relief contemplated by Congress in its enactment of the IGRA. Administrative relief is not likely to be forthcoming for several years, if at all. And The Seminole Tribe of Florida continues to be denied what Congress promised when it enacted the IGRA: access to those class III games that are available to others in the State of Florida.

In short, the IGRA is broken. It hasn't worked for my tribe for than a decade, and the problem is unlikely to be resolved administratively. Therefore, I am here today before this Committee to ask for a legislative remedy. And I would point out that, if the problem cannot be fixed administratively or legislatively, our position will be that the IGRA should be struck down in its entirety.

Scope of Gaming in Florida

I want to make clear to the Committee that this is not a matter of an Indian tribe wanting to bring new and unwanted forms of gambling to a State for whom such activities are anathema and whose public policy clearly reflects the desire to ban such gaming within its boundaries. This is a matter of the State of Florida denying The Seminole Tribe the right to do what is done all over the State every day of the year.

A vast gaming industry flourishes in the State of Florida, despite the State's claim that it prohibits gaming. Much of this gaming is conducted by the State Lottery, from which the State profits directly. The rest is merely permitted by the State, which benefits indirectly (but substantially) from the proceeds. Taken together, the State permits almost every conceivable form of gaming.

In fact, the scope of gaming permitted by the State entitles the Seminole Tribe to operate the following distinct forms of gaming: (1) card games (including house-banked games) and casino games such as roulette and craps; (2) slot machines and electronic facsimiles of games of chance; (3) electronic games of skill; (4) pari-mutuel wagering; and (5) lottery games (including lotto/keno).

1. Card and Casino Games.

The State Lottery Department has statutory authority to operate an almost unlimited range of gaming activities, including card and casino games. The scope of this authority is demonstrated by the games conducted, until recently, on the Lottery's weekly television show referred to as the "Florida Lottery's Million Dollar Flamingo Fortune." All games on

the show are pure games of chance, needing no particular skill or knowledge to participate, and several of the games mimic traditional card and casino gaming. Specifically, the games on this show include a house-banked hi-low card game, a wheel game similar to roulette, and a dice game similar to craps.

As a result of a declaratory action brought by the Seminole Tribe, these games have been adjudged by the Broward County Circuit Court to "constitute games which, if conducted by any person, organization or entity, other than the [Florida Lottery], would constitute gambling in violation of Florida Statute Section 849.01." In other words, the card and casino games operated by the State Lottery constitute gambling activities under Florida law. This judgment, to which the State of Florida consented, makes it clear that such gambling activities (house-banked card and casino games) are permitted by the State. Thus, the Tribe is entitled under the IGRA to a compact or procedures to also operate house-banked card and casino games.

2. Slot Machines and Electronic Facsimiles of Games of Chance

The State Lottery currently operates devices that were adjudged in the State court action noted above to constitute "slot machines" under Florida law. These devices, known as "Instant Ticket Vending Machines" or "ITVMs," are utilized at up to 500 locations around the State. These devices were held to fall within the State's definition of "slot machine" since they: (1) operate upon the insertion of money or other object, (2) may deliver to the player something of value, and (3) operate based upon an element of chance or other unpredictable outcome. Based upon this ruling, the Tribe is entitled to a compact or procedures to operate all devices that satisfy the State's statutory definition of “slot machine.”

3. Electronic Games of Skill

Florida law expressly authorizes coin-operated games of skill. While these games are generally characterized as "amusement" devices, a similar statutory provision in North Carolina entitled the Eastern Band of Cherokee to its class III compact for games of skill. The Seminole Tribe is similarly entitled to a compact or procedures to permit it to operate such games.

4. Pari-Mutuel Wagering and Card-Room Gaming

The State of Florida also permits and regulates a broad range of pari-mutuel and simulcast activity, including among other things, horse racing, dog racing, and jai alai. In order to sustain the viability of the pari-mutuel facilities, the State expressly authorizes and promotes cardroom gaming, including games such as pinochle, bridge, rummy, canasta, hearts, dominoes, mah-jong, and poker (including five card stud, seven card stud, five card draw, low ball, Texas hold-em, pineapple, and Omaha). Thus, the Tribe is entitled to a compact or procedures for pari-mutuel and cardroom gaming.

5. Lotteries

Article X, § 15 of Florida's Constitution expressly permits the operation of lotteries by the State, which are broadly defined as involving the elements of prize, chance, and consideration. In addition to the card and casino games discussed above, the State Lottery employs this broad authority to operate certain "on line" lottery games -- Cash 3, Play 4, Fantasy 5 and Lotto -- that utilize machine terminals widely installed at retail sites. The Tribe is similarly entitled to a compact or procedures to operate games that satisfy the State's definition of "lottery," including games that utilize machine terminals.

6. Other Games

Finally, to the extent that there is any question about the Tribe's right to a compact or procedures for a broad scope of gaming, the State also permits and profits from a vast gaming cruise industry through "cruises to nowhere," which operate out of many Florida ports. Such cruises offer the full range of casino games -- slot machines, table games, roulette, etc. The State also condones charitable casino nights that use blackjack tables, roulette wheels, crap tables and other casino equipment. These further examples demonstrate that Florida permits almost every form of gaming imaginable.

Under the IGRA, the Seminole Tribe is entitled to operate all forms of gaming permitted by the State of Florida. Even under a narrow reading of the IGRA, the Tribe is entitled to a compact or procedures for the forms of gaming noted above due to the vast scope of gaming conducted by the State or permitted to others under Florida law.

Economic Impact of Seminole Gaming

The Seminole Tribe of Florida presently operates a limited variety of class II games on our tribal lands including bingo, low-stakes poker, pull-tabs and lotto. Seminole gaming is a government-sponsored activity whose proceeds are used exclusively for the benefit of the Seminole Tribe. Income from the gaming operations will account for 87 percent of all Seminole tribal income in FY 1999. In turn, gaming proceeds will fund the vast majority of the Seminole Tribe’s expenditures this year. Gaming income funds the administration of the tribal government, per capita distributions to tribal members, tribal parks and recreational facilities and services, tribal member services, education programs and economic development on the reservations that otherwise would not exist.

The federal government has a trust responsibility to provide many of these things, but has not fulfilled that agreement. Gaming has allowed the Tribe to meet its own needs, rather than relying on handouts from the federal government. The Tribe has used gaming revenues to develop a “safety net,” in the form of a monthly stipend for tribal members, to assure that no Seminole need draw on state or federal welfare funds for support. Seminole gaming provides significant benefits to surrounding, non-Indian communities, as well.

The Seminole Tribe of Florida currently employs more than 2,000 non-Indians and purchases more than $24 million dollars in goods and services from more than 850 Florida vendors a year. In addition, the Tribe pays $3.5 million in federal payroll taxes. Security companies, office supply stores, photocopying companies, insurance companies, banks, and maintenance companies in surrounding local communities provide goods and services to Seminole gaming facilities, as well as other tribal enterprises established with seed money from gaming revenues.

We have come a long way since the opening of our first bingo hall in 1979, but much remains to be done. Class III gaming pursuant to a tribal-state compact or secretarial procedures would allow the Tribe the economic stability to make long-term economic decisions for the benefit of the Tribe and its members. Expanded rehabilitation services and on-reservation treatment for chronically ill tribal members, improved surface-water control systems, road improvements, expanded cultural programs and increased investment in non-gaming economic development activities would all be made possible by a class III gaming compact or secretarial procedures.

The Seminole Tribe has a right, granted by the IGRA, to class III games. We are prepared to vigorously defend that right, not just because of the economic implications (which are significant), but also to preserve the integrity of our tribal government and our status as a sovereign nation possessing a government-to-government relationship with the United States.

Conclusion

As detailed above, The Seminole Tribe of Florida's right to conduct class III gaming otherwise available in the State of Florida is unenforceable, due to the State's assertion of Eleventh Amendment immunity to a good-faith lawsuit pursuant to IGRA. Thus, the State has bypassed both the Tribe and the Congress, defeating the expressed intent of the Act. The Seminole Tribe has been demonstrably harmed as a result, as we have been denied access to class III gaming activities readily available to others in the State.

Congress has an obligation to right this injustice. It is our analysis that Chairman Campbell's bill, S. 985, seeks to accomplish that goal. Mr. Chairman, we commend you and thank you for developing and introducing a bill that truly seeks to solve the "Seminole problem" as it is known (although we see it as the "State of Florida problem") in a way that is fair to all parties. In terms of specific provisions of the bill, we do have some concerns about giving the states the right to go to a three-judge court for review of the Secretary's actions, which we understand would result in an automatic right to Supreme Court review. We think it would be more appropriate to have any challenges handled through the ordinary processes of the federal district court. We also are aware of testimony submitted by the National Indian Gaming Association suggesting technical changes in the bill. We believe these suggestions should be give careful consideration by the Committee.

We look forward to working with you and your staff to refine the details of the bill, and urge the Committee -- and the Congress -- to make redressing the injustice that my Tribe has suffered as a result of the State's assertion of sovereign immunity to a judicial finding pursuant to IGRA a top priority. We look forward to the day when The Seminole Tribe of Florida has access to the same kinds of class III gaming now enjoyed by non-Indians in the State for Florida.

Sho Naa Bisha.